

Session 13-20 a Regular Meeting of the Homer City Council was called to order on October 14, 2013 at 6:00 p.m. by Mayor Mary E. Wythe at the Homer City Hall Cowles Council Chambers located at 491 E. Pioneer Avenue, Homer, Alaska, and opened with the Pledge of Allegiance.

**PRESENT:** COUNCILMEMBERS: BURGESS, DOLMA, HOWARD, LEWIS, ROBERTS, ZAK

STAFF: ACTING CITY MANAGER/CLERK JOHNSON  
CITY ATTORNEY KLINKNER  
COMMUNITY & ECONOMIC DEVELOPMENT  
COORDINATOR KOESTER  
FINANCE DIRECTOR LI  
LIBRARY DIRECTOR DIXON  
POLICE CHIEF ROBL  
PORT AND HARBOR DIRECTOR HAWKINS  
PUBLIC WORKS PROJECT MANAGER NELSEN

Council met as a Committee of the Whole from 5:00 p.m. to 5:51 p.m. to discuss 2014 Budget.

Department Heads may be called upon from time to time to participate via teleconference.

### **AGENDA APPROVAL**

(Addition of items to or removing items from the agenda will be by unanimous consent of the Council. HCC 1.24.040.)

The agenda was amended to include the oath of office for newly elected officials, Incumbent Bryan Zak and New Councilmember Gus Van Dyke, and seating arrangement for Council under Announcements/Presentations.

The following changes were made:

**CONSENT AGENDA -\_Resolution 13-097**, A Resolution of the City Council Certifying the Results of the City of Homer Regular Election Held October 1, 2013 to Decide Ballot Referendum #1 “Shall Homer City Code Chapter 5.42 Prohibiting Sellers from Providing Customers with Disposable Plastic Shopping Bags be Repealed: and to Elect Two Council Members. City Clerk/Canvass Board. Memorandum 13-146 from Deputy City Clerk as backup.  
**Resolution 13-102**, A Resolution of the Homer City Council Restoring the Irrevocable

Grandfather Rights Back to the Bay View Inn. Zak. Memorandum 13-147 from City Attorney as backup. Written public comments. **ANNOUNCEMENTS/PRESENTATIONS/BOROUGH REPORT/COMMISSION REPORTS** - Oath of Office to Newly Elected Officials Gus Van Dyke and Bryan Zak; **PUBLIC HEARING(S)** - **2014 Budget**; Written public comments. **PENDING BUSINESS** - **Resolution 13-106(S)**, A Resolution of the Homer City Council Awarding the Bid for the Operation and Management of the Homer Animal Shelter to Coastal Animal Care of Homer, Alaska, in the Amount of \$129,988.80 for a Three-Year Contract, with a Two-Year Extension Option, and Authorizing the City Manager to Execute the Appropriate Documents. City Clerk/Police Chief. Memorandum 13-145 from Police Chief as backup.

Mayor Wythe called for a motion for the approval of the agenda as amended.

LEWIS/ROBERTS - SO MOVED.

There was no discussion.

VOTE: YES. NON OBJECTION. UNANIMOUS CONSENT.

Motion carried.

#### **PUBLIC COMMENTS UPON MATTERS ALREADY ON THE AGENDA**

Lindianne Sarno, city resident and member of Homer Area Trails, supports the Kachemak Drive non-motorized path. No reconsideration is needed on Resolution 13-040.

Beth Cumming, city resident, asked Council to vote down reconsideration for Resolution 13-040.

#### **RECONSIDERATION**

- A. **Resolution 13-040**, A Resolution of the Homer City Council Directing the City Administration to Terminate All Survey, Design, and Cost Estimating Work on the Kachemak Drive Pathway. Mayor.

Mayor Wythe called for a motion to reconsider Resolution 13-040.

ROBERTS/HOWARD – SO MOVED.

Councilmember Roberts brought the resolution back for reconsideration to allow an opportunity to vote the way she intended.

VOTE: YES. ROBERTS, HOWARD

VOTE: NO. DOLMA, ZAK, BURGESS, LEWIS

Motion failed.

## **CONSENT AGENDA**

(Items listed below will be enacted by one motion. If separate discussion is desired on an item, that item may be removed from the Consent Agenda and placed on the Regular Meeting Agenda at the request of a Councilmember.)

- A. **Memorandum 13-139**, from Mayor, Re: Appointment of Roger MacCampbell to the Parks and Recreation Advisory Commission, Tom Stroozas to the Planning Commission, and Daniel Donich to the Port and Harbor Advisory Commission, and the Reappointment of Dave Brann to the Parks and Recreation Advisory Commission.
- B. **Ordinance 13-39**, An Ordinance of the City Council of Homer, Alaska, Accepting and Appropriating a Land and Water Conservation Fund Grant from the State of Alaska Division of Parks and Outdoor Recreation in the Amount of \$75,000 and Appropriating the Required Local Match in the Amount of \$75,000 for Improvements to Karen Hornaday Park and Authorizing the City Manager to Execute the Appropriate Documents. City Manager. Introduction October 14, 2013, Public Hearing and Second Reading October 28, 2013.
- C. **Ordinance 13-40**, An Ordinance of the Homer City Council, Amending HCC 7.04.010, State Statutes Adopted by Reference, HCC 7.04.020, Copies of State Traffic Code on File, HCC 7.04.030, Violation—Penalty, HCC 7.08.010, Compliance with State Law, HCC 7.08.045, Handicapped Parking, HCC 7.08.058, Removal of Impoundment Notice, and HCC 10.04.110, Violation—Penalty; and Repealing HCC 7.04.023, State Schedule of Minor Traffic Offenses and Bail Forfeiture—Adopted, HCC 7.04.025, State Schedule of Minor Traffic Offenses and Bail Forfeiture—Conflict with General Penalty, HCC 7.06.100, Penalty and Fine Schedule, HCC 7.08.060, Violation—Penalty, HCC 7.20.010, Compliance with State Law, HCC 7.20.080, Violation—Penalty, HCC Chapter 24, Traffic Violation Mandatory Sentences, and HCC 7.28.060, Violation; Penalty; to Establish a

Consolidated Traffic Fine Schedule. City Clerk. Introduction October 14, 2013, Public Hearing and Second Reading October 28, 2013.

- D. **Ordinance 13-41**, An Ordinance of the City Council of Homer, Alaska, Appropriating a U.S. Fish & Wildlife Learning Landscape Grant with 50% In-Kind Matching Requirement, Up to \$25,000, for the Purpose of Completing Landscaping Improvements at Karen Hornaday Park Playground. City Manager/Public Works Director. Introduction October 14, 2013, Public Hearing and Second Reading October 28, 2013.

Memorandum 13-142 from Public Works Director as backup.

- E. **Resolution 13-097**, A Resolution of the City Council Certifying the Results of the City of Homer Regular Election Held October 1, 2013 to Decide Ballot Referendum #1 "Shall Homer City Code Chapter 5.42 Prohibiting Sellers from Providing Customers with Disposable Plastic Shopping Bags be Repealed: and to Elect Two Council Members. City Clerk/Canvass Board. Recommend adoption.

Memorandum 13-146 from Deputy City Clerk as backup.

- F. **Resolution 13-098**, A Resolution of the City Council of Homer, Alaska, Expressing Support for the Pratt Museum's Grant Request in the Amount of \$2.55 Million for Its New Facility. Mayor/Roberts/Burgess. Recommend adoption.
- G. **Resolution 13-099**, A Resolution of the Homer City Council Encouraging Governor Parnell and the Alaska State Legislature to Invest in Transportation Infrastructure. Burgess. Recommend adoption.
- H. **Resolution 13-100**, A Resolution of the City Council of Homer, Alaska, Requesting the Governor to Include in His FY 2015 Capital Budget a Deposit of \$100 Million into the Vessel Replacement Fund for the Purpose of Constructing a New Ocean-Going Vessel to Replace the M/V Tustumena. Mayor/City Council. Recommend adoption.
- I. **Resolution 13-101**, A Resolution of the City Council Of Homer, Alaska, Supporting the Center for Alaskan Coastal Studies Recreational Trail Program Grant Application Administered by the Alaska Department of Natural Resources, Division of Parks and Outdoor Recreation. Zak. Recommend adoption.
- J. **Resolution 13-102**, A Resolution of the Homer City Council Restoring the Irrevocable Grandfather Rights Back to the Bay View Inn. Zak. Recommend adoption.

Memorandum 13-147 from City Attorney as backup.

MOVED TO RESOLUTIONS.

- K. **Resolution 13-103**, A Resolution of the City Council of Homer, Alaska, Approving a Sublease and Operating Agreement Between the Kenai Peninsula Borough and South Peninsula Hospital Inc. Dated August 28, 2013. City Manager. Recommend adoption.
- L. **Resolution 13-104**, A Resolution of the Homer City Council Awarding the Contract for the Homer Natural Gas Conversion Project Phase I to the Firm of Intelligent Design, LLC of Anchorage, Alaska, in the Amount of \$56,776.00 and Authorizing the City Manager to Execute the Appropriate Documents. City Clerk/Public Works Director. Recommend adoption.

Memorandum 13-143 from Project Manager as backup.

- M. **Resolution 13-105**, A Resolution of the Homer City Council Awarding the Bid for the Snow Removal and Sanding Services 2013/14, 2014/15, and 2015/16 to the Firm of Gregoire Construction of Homer, Alaska, in the Amount of \$450.00 per Snow Plow/Trip; \$450.00 per Sanding/Trip; Total/Trip \$900.00 and Authorizing the City Manager to Execute the Appropriate Documents. City Clerk/Public Works Director. Recommend adoption.

Memorandum 13-144 from Public Works Director as backup.

MOVED TO RESOLUTIONS.

- N. **Memorandum 13-140**, from City Clerk, Re: Travel Authorization for Mayor Wythe and Councilmember Zak to Attend the Alaska Municipal League 63<sup>rd</sup> Annual Local Government Conference in Anchorage, Alaska, November 18 - 22, 2013.
- O. **Memorandum 13-141**, From City Clerk Re: Vacate the West Half of the 80-foot Wide Public Use Easement that Extends Through the East Portion of Lot 38, Bunnell's Subdivision. Said Plat Bunnell's Subdivision is Recorded in the Seldovia Recording District. Said Easement was Created in 1970 and Recorded in Book 60 Page 230-234 Homer Recording District (HRD), and is Applied to the Subject Property by the Applicant Note Page 230 of Book 60 HRD Describing Property by Parcel No. 175-142-13, and as Lot 28 of Bunnell's Subdivision. Said Easement is Further Shown as

Easement 21 Within Said Book 60 Page 234 HRD. All Property Lies Within Section 19, Township 6, Range 13 West, Seward Meridian, Alaska, Within the City of Homer and the Kenai Peninsula Borough, KPB File 2013-132; Location: City of Homer.

Item J – Resolution 13-102 and Item M – Resolution 13-105 were moved to Resolutions.

Mayor Wythe called for a motion for the approval of the recommendations of the consent agenda as read.

ZAK/LEWIS – SO MOVED.

There was no discussion.

VOTE: YES. NON OBJECTION. UNANIMOUS CONSENT.

Motion carried.

## **VISITORS**

## **ANNOUNCEMENTS/PRESENTATIONS/BOROUGH REPORT/COMMISSION REPORTS**

### **A. Recognition of Councilmember Dolma**

Mayor Wythe recognized Councilmember Dolma for his service on the Council and presented him a plaque.

### **B. Oath of Office Administered to the Newly Elected Officials Gus Van Dyke and Bryan Zak/Seating Arrangement**

City Clerk Johnson administered the Oath of Office to Gus Van Dyke and Bryan Zak.

Council retained their current seating arrangement with newly elected member Gus Van Dyke to replace James Dolma's seat.

### **C. Borough Report**

Bill Smith, Kenai Peninsula Borough Assemblyman, reported Mayor Navarre had a good conversation with Governor Parnell on health care needs and support for the Pratt Museum. The Assembly presented their short capital project list that includes a request for money for roads. They are asking for money to contain or eradicate the plant infestation Elodia. If it spreads in the Bridge Creek reservoir it would be difficult to deal with. The Assembly is looking for support for shoring up the Tall Tree Bridge and supporting Homer Electric's request for a generator for Seldovia. They need backup for the south side of the bay when the lines go down in storms. There is a need to recap the landfill; there is \$250,000 for design work and \$1.9M to manage the landfill after it is closed. It is the first of three phases to close the landfill that will be ongoing for the next 15 years.

D. Commissions/Board Reports:

1. Library Advisory Board

a. 2013 Strategic Plan

David Groesbeck, LAB Chair, referenced the draft strategic plan that is a work in progress and represents the thinking of members of the LAB.

2. Homer Advisory Planning Commission

3. Economic Development Advisory Commission

Lindianne Sarno, Chair of the EDC, reported Councilmember Zak, Katie Koester, and she toured the city water intake plant. Todd Cook provided an excellent tour that she highly recommends. From an economic development point of view they are looking at marketing the hundreds of thousands of gallons of water we don't use. The EDC plans to tour the sewage treatment plant and she wonders what marketable product will be discovered there.

4. Parks and Recreation Advisory Commission

Matt Steffey, Parks and Recreation Advisory Commissioner, congratulated Councilmembers Zak and Van Dyke. He welcomed Roger MacCampbell to the Parks and Recreation Advisory Commission and Dave Brann for renewing his seat. Recently there was a clean up of the Poopdeck Trail to clear alder from the trail. The recreate rec group is gaining momentum. Kate Crowley has scheduled a visit to the Sterling Community Recreation Center on October

28<sup>th</sup> from 10:30 a.m. to noon. Members of the commission will be attending and Council is invited. Letters of support for the parks and recreation needs assessment are contained in the council packet. It is a one-time budget expenditure for a needs assessment that has not been conducted since the 80's. He requested Council keep the item on the table as they move through the budget process. The cost of the needs assessment is \$50,000.

5. Port and Harbor Advisory Commission

**PUBLIC HEARING(S)**

A. **2014 BUDGET**

Budget Message for Fiscal Year 2014 from City Manager  
Memorandum 13-137 from City Manager, Re: Amendments to Employee Health Insurance Plan  
Memorandum 13-138 from Fire Chief, Re: Fire Department Budget Requests

Mayor Wythe opened the public hearing. In the absence of public testimony, Mayor Wythe closed the public hearing.

**ORDINANCE(S)**

**CITY MANAGER'S REPORT**

- A. City Manager's Report
- B. Bid Report

**CITY ATTORNEY REPORT**

- 1. City Attorney Report – September 2013

City Attorney Klinkner congratulated the newly elected council members. He reported the litigation with Tony Neal over the terms of his donation of Ben Walters Memorial Park has been resolved in the City's favor. A final judgment has been entered that voids the covenants document that Mr. Neal relied on for his claim against the city. The City's record title is clear of the covenants document. The deed to the park is still in effect and contains conditions for



the property's use as a park. It remains in effect and is binding on the city. We secured Mr. Neal's agreement not to appeal the decision and in return agreed to waive any claim for attorney fees.

## **COMMITTEE REPORT**

- A. Public Arts Committee
- B. Transportation Advisory Committee
- C. Permanent Fund Committee
- D. Lease Committee
- E. Port and Harbor Improvement Committee
- F. Employee Committee Report
- G. Port and Harbor Building Task Force

## **PENDING BUSINESS**

- A. (If Reconsideration Passes) **Resolution 13-040**, A Resolution of the Homer City Council Directing the City Administration to Terminate All Survey, Design, and Cost Estimating Work on the Kachemak Drive Pathway. Mayor.

Memorandums 13-059 and 13-135 from Parks and Recreation Advisory Commission as backup.

Reconsideration failed. No action taken.

## **NEW BUSINESS**

## **RESOLUTIONS**

- A. **Resolution 13-106**, A Resolution of the Homer City Council Awarding the Bid for the Operation and Management of the Homer Animal Shelter to the Lowest Responsible

Bidder in the Amount of the Low Bid and Authorizing the City Manager to Execute the Appropriate Documents. City Clerk/Police Chief.

**Resolution 13-106(S)**, A Resolution of the Homer City Council Awarding the Bid for the Operation and Management of the Homer Animal Shelter to Coastal Animal Care of Homer, Alaska, in the Amount of \$129,988.80 for a Three-Year Contract, with a Two-Year Extension Option, and Authorizing the City Manager to Execute the Appropriate Documents. City Clerk/Police Chief.

Memorandum 13-145 from Police Chief as backup.

Mayor Wythe called for a motion for the adoption of Resolution 13-106 by reading of title only.

LEWIS/ZAK – SO MOVED.

There was no discussion.

VOTE: YES. NON OBJECTION. UNANIMOUS CONSENT.

Motion carried.

Mayor Wythe called for a motion to substitute Resolution 13-106(S) for Resolution 13-106.

BURGESS/ZAK – SO MOVED.

There was no discussion.

VOTE: YES. NON OBJECTION. UNANIMOUS CONSENT.

Motion carried.

VOTE: (main motion as amended) YES. NON OBJECTION. UNANIMOUS CONSENT.

Motion carried.

- B. **Resolution 13-102**, A Resolution of the Homer City Council Restoring the Irrevocable Grandfather Rights Back to the Bay View Inn. Zak.

Memorandum 13-147 from City Attorney as backup.

Mayor Wythe called for a motion for the adoption of Resolution 13-102 by reading of title only.

ZAK/LEWIS – SO MOVED.

Councilmember Zak brought the resolution forward for a chance to discuss it. Memorandum 13-147 from the city attorney talks about the reasons why we cannot just grandfather businesses in. He talked to Planning about procedures anyone with a business could go through to become conforming. Just one day of operating the business within the twelve month period makes it conforming. If that is not possible there is the option of a conditional use permit through the Planning Commission or addressing the definition of non-conforming or discontinuance. Both of those options might be another way for businesses to continue operations.

Councilmember Burgess agrees with Councilmember Zak's intention to assist a business. We do run a lot of legal risks by playing favorites or micromanaging. The best approach is to find a more universal solution, still remaining business friendly.

Councilmember Howard commented a property owner has the right to have his property at the highest and best use. The value of the subject property has been reduced by taking it back to residential. A solution must be applicable city-wide. In most courts property rights are precious and we need to be careful. She encouraged the applicants to work through the proper channels to resolve things for the good of the whole.

Councilmember Lewis asked the city attorney if it is possible to go back to the ordinance that all businesses in the annexed portion of the city could be grandfathered in permanently. Because of annexation businesses should not be punished.

City Attorney Klinkner will review the annexation/grandfather rights for properties.

Councilmember Dolma thinks the conversation is not properly directed. There are legal mechanisms by legal remedy that could have been taken by the landowner to avoid the situation. It is wrong to address this for a specific landowner.

Mayor Wythe advised Council they can provide direction to Planning and Zoning. It can be a broad direction that they explore alternatives with no impact on businesses. The attorney could look to see if there is a provision related to annexation.

Councilmember Dolma reiterated the situation wasn't caused by the way the grandfathered business was set up. The problem was that the owner of the property did not do things that were possible; it was poor planning. It is not something the city did wrong and this is not the correct way to fix it.

Councilmember Burgess requested the Planning Commission take a look at how to transition uses that are nonconforming into conforming uses. He runs into the situation with neighbors and other small businesses. He requested the Planning Commission to come back with something more user friendly.

Mayor Wythe confirmed Council's recommendation to have Planning review nonconforming uses.

VOTE: NO. LEWIS, ROBERTS, DOLMA, ZAK, HOWARD, BURGESS

Motion failed.

- C.     **Resolution 13-105**, A Resolution of the Homer City Council Awarding the Bid for the Snow Removal and Sanding Services 2013/14, 2014/15, and 2015/16 to the Firm of Gregoire Construction of Homer, Alaska, in the Amount of \$450.00 per Snow Plow/Trip; \$450.00 per Sanding/Trip; Total/Trip \$900.00 and Authorizing the City Manager to Execute the Appropriate Documents. City Clerk/Public Works Director. Recommend adoption.

Memorandum 13-144 from Public Works Director as backup.

Mayor Wythe called for a motion for the adoption of Resolution 13-105 by reading of title only.

DOLMA/LEWIS - SO MOVED.

Councilmember Dolma questioned the high rates and asked if it was possible for the city employees to do the plowing/sanding or put it out for bid again.

Councilmember Burgess commented the bid seemed high, but there are five buildings to plow. That computes to \$90 per building for plowing/sanding. Gregoire Construction is qualified to do the work.

Council discussed the option of postponing action to October 28<sup>th</sup> when the City Manager and Public Works Director were back. After hearing that Public Works was busy plowing/sanding other critical areas of town in the early mornings, Council decided to award the contract tonight.

VOTE: YES. NON OBJECTION. UNANIMOUS CONSENT.

Motion carried.

#### **COMMENTS OF THE AUDIENCE**

There were no comments of the audience.

#### **COMMENTS OF THE CITY ATTORNEY**

City Attorney Klinkner had no comment.

#### **COMMENTS OF THE CITY CLERK**

City Clerk Johnson thanked everyone that participated in this year's election. It was a successful election with a few new learning experiences. We appreciate our election workers and the other clerks in the office.

#### **COMMENTS OF THE CITY MANAGER**

Acting City Manager Johnson had no comment.

#### **COMMENTS OF THE MAYOR**

Mayor Wythe congratulated Bryan and Gus and thanked James for his commitment this last year. She thanked Jo for taking on the role of the city manager while Walt is on vacation and for being the city clerk.

#### **COMMENTS OF THE CITY COUNCIL**

Councilmember Dolma commented it has been a fun year. He is looking forward to following the exploits of the City Council next year.

Councilmember Lewis thanked James. He said it has been fun serving with him. He is sure James will enjoy sitting home on Monday nights now. He congratulated both Bryan and Gus and Justin on his successful return of the bags. He is disappointed but not surprised.

Councilmember Burgess thanked everyone for a great meeting and thanked everyone for voting in the election. He will be sad to see James go. Bryan and Gus, let's work hard. For upcoming budget priorities it important that we pay attention to and seriously consider the upcoming 2% staff COLA. We should look to the COLA and increasing base pay as a way to justify and reduce health care costs. Given the budget presentation, we need to look at optimizing our operating revenues. There is money we could be making on airport operations and across the board. A community recreation needs assessment is needed. There are a lot of other things the community can do to keep the ball rolling and bring in other revenue streams. We should take the Chamber's request for funding to shore up the visitors center and marketing more seriously. We rely on the Chamber of Commerce to market the community.

Councilmember Zak thanked James for his service to the community. As James said, there is opportunity for past council members to sign up for a commission. He thanked all the people that ran the election. He met a lot of great people and learned a lot from them in the process. It was a learning process after the election to see the recount and the professionalism with the voting. The way everything was done is a critical process that was done correctly by professionals. It was a 3.5 to 4 hour process and he felt reassured at the importance of voting. He appreciates the time voters took to come to vote; it was down to ten votes. He thanked the LAB for presenting their strategic plan, and acknowledged the letters in the packet from the Homer Hockey Association and the rec group. Lastly, he thanked the folks that asked him to present Resolution 13-102 to try to find a solution to the nonconforming use. There are three or four possible solutions that we have to keep addressing.

Councilmember Roberts thanked James for his service. She enjoyed working with him. He is an insightful and thoughtful person. She looks forward to continuing to work with Bryan and welcomed Gus.

Councilmember Howard thanked James for serving on the City Council and Planning Commission. She enjoyed working with him. She congratulated and welcomed Gus. She thanked the unsuccessful candidates for getting in the arena. She thanked the Clerks for running a smooth election and conducting the recount. It was a lot of stress, but they complied with the law very well.

Mayor Wythe announced the Rotary Health Fair is Saturday, November 2.

## **ADJOURNMENT**

There being no further business to come before the Council, Mayor Wythe adjourned the meeting at 7:02 p.m. The next Regular Meeting is Monday, October 28, 2013 at 6:00 p.m. and Committee of the Whole 5:00 p.m. All meetings scheduled to be held in the City Hall Cowles Council Chambers located at 491 E. Pioneer Avenue, Homer, Alaska.

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JO JOHNSON, MMC, CITY CLERK

Approved: \_\_\_\_\_